



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Telecommunications Specialists, Inc.

File: B-224842.2

Date: February 26, 1987

DIGEST

Protest alleging that contracting officials were biased and improperly rejected the protesters proposal is denied because these allegations are not supported by the record which shows that deficiencies in the protester's proposal were not corrected following meaningful discussions, and that the proposal was properly rejected as unacceptable.

DECISION

Telecommunications Specialists, Inc., (Telspec) protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. DAAB07-86-R-J010, issued by the Army for communications equipment shelters containing computer and communications equipment--referred to by the Army as communications systems control elements (CSCE shelters and equipment).^{1/} CSCE shelters and equipment are to be used to control a tactical communications network. According to Telspec, the Army evaluated its proposal arbitrarily and unfairly. We deny the protest.

The RFP called for fixed-price offers, and provided in Section M.55 that award would be made to the firm submitting the conforming offer representing the best value to the government. Section M.55 further provided that, to be considered for award, a proposal had to be rated as at least acceptable under four evaluation factors, listed in descending order of importance, as follows:

^{1/} American Development Corporation also protested the rejection of its proposal under the same solicitation. See American Development Corp., B-224842, Jan. 7, 1987, 87-1 CPD ¶ ___, denying Adcor's protest.

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"1. Factor I - Technical. This factor consists of the following subfactors listed in descending order of importance. To receive consideration for award, a rating of no less than acceptable must be achieved for each of the three subfactors listed.

- a. System Performance (Subfactor)
- b. Operational Suitability (Subfactor)
- c. Production Readiness (Subfactor)

2. Factor II - Cost/Price.

3. Factor III - Logistics.

4. Factor IV - Management."

Proposals were received from three firms, Telspec, American Development Corp. (Adcor) and Electrospace Systems, Inc. An initial evaluation of the technical proposals was conducted, using adjectival ratings ("superior," "good," "acceptable," "reasonably susceptible to being made acceptable," and "unacceptable"). Telspec's proposal was rated susceptible to being made acceptable.

By letter dated July 21, 1986, the contracting officer sent Telspec a list of questions concerning weaknesses and deficiencies identified in Telspec's proposal. Telspec responded by offering revisions and clarifications to its proposal, after which oral discussions were held with Telspec, as well as with the other two offerors. A request for best and final offers followed. The Army's final evaluation found Telspec's best and final offer to be unacceptable with respect to both the technical and logistics factors. Accordingly, the Army rejected Telspec's proposal. Since the Army also rejected Adcor's proposal, it made award to Electrospace.

The protester complains that it submitted the low priced proposal and should have received the award. Moreover, Telspec believes that the contracting officer was biased and sought to prevent Telspec from getting the award. Specifically, Telspec complains that the contracting officer reprimanded the firm for seeking clarification of the statement of work and did not fully answer Telspec's concerns at the debriefing. In this regard, Telspec says it was not given a satisfactory explanation as to why if its proposal was unacceptable, Telspec was invited to submit a best and final offer, and why in view of its lower price the Army did not conduct further discussions to correct any remaining deficiencies. Further, the protester questions the Army's failure to furnish it information regarding the evaluation and selection of Electrospace and notes that the date on the rejection letter it received was the same as the date of the award to Electrospace, but that letter implied that award had not yet been made. Telspec finally states that it was

advised by the contracting officer during the procurement that he did not expect to be reassigned yet he was reassigned shortly after the Electrospace award was made.

The protest is without merit.

Telspec did submit the lowest priced proposal. However, as the Army points out, its price was low by only \$750,000 out of approximately \$100 million, when evaluated on the basis of total price, including options, as required by the RFP. In any event, the Army properly did not make award to Telspec whose proposal was unacceptable. It was irrelevant that that firm's proposal was lower in price. See Thomas Engineering Co., B-220393, Jan. 14, 1986, 86-1 CPD ¶ 36.

Next Telspec asserts that it should not have been invited to submit a best and final offer if its proposal was unacceptable, and complains that the Army should have conducted further discussions with it to correct any deficiency the Army may have believed remained after the protester had submitted its best and final offer. As the Army observes it is proper to include in the competitive range those firms whose proposals are considered to have a reasonable chance of receiving award, whether the proposal is considered acceptable or like Telspec's proposal merely susceptible of being made acceptable. GTE Government Systems Corp., B-222587, Sept. 9, 1986, 86-2 CPD ¶ 276. To afford Telspec an opportunity to correct deficiencies in its proposal, discussions (both written and oral) were held. The protester was furnished with a list of 146 questions covering all aspects of its proposal.

Although Telspec subsequently corrected some of the deficiencies, the Army's final evaluation report on Telspec's best and final proposal lists 21 weaknesses and 24 deficiencies remaining under the technical evaluation factor alone. The final evaluation report also indicates that 23 weaknesses and 19 deficiencies remained under the logistics evaluation factor. The proposal was rated unacceptable under all three technical subfactors and on the overall technical and logistics evaluation factors.

To focus on only a few of the many deficiencies that remained, as the Army explains, Telspec's proposal failed to show that its uninterrupted power supply (UPS) would meet the requirements of the purchase description to supply power for all equipment except ECUs (environmental control units) and remote terminal clusters. In fact, Telspec specifically excluded shelter lighting and utility outlets in responding to the UPS requirement.

Telspec says that during oral discussions it agreed to include shelter lighting and utility outlets, albeit without increasing the capacity of its UPS (a point the Army had also questioned), but it failed to modify its proposal by correcting the deficiency in its best and final offer. The solicitation, at section M.56 specifically stated that each proposal would be rated strictly on its written content and warned that the evaluators would "not assume that the offeror's performance will include areas of investigation or tasks and efforts to be performed that are not described in the written proposal."

Further, under the logistics factor, the RFP required that offerors submit detailed information concerning how they would provide fully documented manuals for the equipment furnished with the CSCE shelters. Telspec, in its initial proposal, furnished only minimal information and was asked, both in writing and during oral discussions, to address in detail how it would meet this requirement. The Army viewed the protester's response as superficial and inaccurate. Telspec did not even correctly identify the types of documentation (related to maintenance levels) explicitly required and described by the RFP.

Telspec asserts that it could have corrected the remaining deficiencies had it been given a further opportunity to do so. We have held that discussions are adequate if, following a diligent effort by the agency to identify deficiencies, an offeror is made aware of the agency's concerns, and is subsequently afforded an opportunity to revise its proposal. Agencies are not required to reopen discussions to afford an offeror a second chance to correct its proposal or to correct deficiencies that, through no fault of the agency, become apparent only after the agency has evaluated data an offeror submits to correct informational deficiencies that were addressed during discussions. Cosmodyne, Inc.; et al., B-216258, et al., Sept. 19, 1985, 85-2 CPD ¶ 304. In short, it is the offeror's duty to include sufficiently detailed information in its proposal to establish that the equipment offered will meet the solicitation requirements. Johnston Communications, B-221346, Feb. 28, 1986, 86-1 CPD ¶ 211. The protester did not do so.

Telspec has not shown that the Army acted arbitrarily in rejecting its proposal, and we see no basis on which to question the Army's action.

Since we think that Telspec's proposal was properly rejected, we need not treat in detail the remaining issues it has raised regarding its treatment by the contracting officer.

We note, however, that Telspec's concerns appear groundless. There is no legal prohibition preventing the Army from making award on the day that it wrote Telspec, advising that firm of the rejection of its proposal. The Army's rejection notice, which Telspec says implied that award had not been made, was merely a standard form letter. Further, the record indicates that the Army did respond to Telspec's requests for information regarding the solicitation. The alleged reprimand, Telspec concedes, consisted of advice to Telspec that it was up to it, as the offeror, to decide how best to frame its proposal and of a statement that some of Telspec's questions were "irrelevant"--the latter, apparently, in reference to a concern expressed by Telspec that two pages in the solicitation had been collated out of sequence. We also note that, contrary to Telspec's apparent expectations, contracting agencies are not to disclose details of other offeror's proposals during debriefings. Federal Acquisition Regulation, 48-C.F.R. § 15.1003 (1986). Finally, the contracting officer's reassignment to other duties appears to have been a routine reassignment having no connection with the conduct of this procurement.

The protest is denied.

for Seymour E. Fox
Harry R. Van Cleve
General Counsel